

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IAN O. MAUSNER,

Plaintiff,

-v-

IRENA K. MAUSNER et al.,

Defendants.
-----X

24-CV-1453 (JMF)

MEMORANDUM OPINION
AND ORDER

JESSE M. FURMAN, United States District Judge:

Plaintiff, who is proceeding *pro se*, paid the fees to commence this action, in which he invokes the Court’s subject matter jurisdiction based on federal question and diversity of citizenship. *See* ECF No. 1 (“Compl.”), at 2.

STANDARD OF REVIEW

The Court has the authority to dismiss a complaint for failure to state a claim, even when the plaintiff has paid the fees to bring an action, “so long as the plaintiff is given notice and an opportunity to be heard.” *Wachtler v. County of Herkimer*, 35 F.3d 77, 82 (2d Cir. 1994) (internal quotation marks omitted). The Court is obliged, however, to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks omitted).

DISCUSSION

A. Leave to Replead as to David Allinson

Plaintiff names David Allinson as a Defendant in the caption of the Complaint, *see* Compl. at 1, but the Complaint itself does not contain any allegations against David Allinson that

would show why he has been named as a Defendant. *See Dove v. Fordham Univ.*, 56 F. Supp. 2d 330, 335 (S.D.N.Y. 1999) (“[W]here the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted.” (citations omitted)); *Iwachiw v. New York State Dep’t of Motor Vehicles*, 299 F. Supp. 2d 117, 121 (E.D.N.Y. 2004) (dismissing claims against the governor because the “only mention of his name is in the caption of the amended complaint”).

The Court therefore dismisses Plaintiff’s claims against David Allinson, but grants Plaintiff leave to file an amended complaint, should he wish to do so, that sets forth facts suggesting that David Allinson should be held liable for what Plaintiff alleges occurred.

B. Service on Irena K. Mausner and Nicole Allinson

The Clerk of Court is directed to issue summonses as to Defendants Irena K. Mausner and Nicole Allinson. Plaintiff is directed to serve a copy of a summons and Complaint on each of those Defendants within 90 days of the issuance of the summonses.¹

If within those 90 days, Plaintiff has not either served those Defendants or requested an extension of time to do so, the Court may dismiss Plaintiff’s claims against those Defendants under Rules 4 and 41 of the Federal Rules of Civil Procedure for failure to prosecute.

CONCLUSION

The Court dismisses Plaintiff’s claims against David Allinson for failure to state a claim on which relief may be granted, but grants Plaintiff 30 days’ leave to replead those claims in an


¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, the summonses in this action were not issued when Plaintiff filed the Complaint because he had not paid the required fees at the time of filing, but did so subsequently. The Court therefore extends the time to serve until 90 days after the date the summonses are issued.

amended complaint. An amended complaint form is attached to this order.

The Clerk of Court is directed to: (1) issue summonses for Irena K. Mausner and Nicole Allinson; (2) mail both a copy of this Memorandum Opinion and Order and an information package to Plaintiff; and (3) terminate David Allinson as a Defendant.

SO ORDERED.

Dated: March 7, 2024
New York, New York



JESSE M. FURMAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

____ Civ. _____ (____)

**AMENDED
COMPLAINT**

Jury Trial: ☐ Yes ☐ No
(check one)

I. Parties in this complaint:

- A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name _____
Street Address _____
County, City _____
State & Zip Code _____
Telephone Number _____

- B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 2 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 3 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 4 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

II. **Basis for Jurisdiction:**

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? *(check all that apply)*

☐ Federal Questions

☐ Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? _____

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship _____

Defendant(s) state(s) of citizenship _____

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? _____

B. What date and approximate time did the events giving rise to your claim(s) occur? _____

C. Facts: _____

What
happened
to you?

Who did
what?

Was anyone
else
involved?

Who else
saw what
happened?

IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____
